

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SHAWN ANTONIO TRAPP, et al.,

Plaintiffs,

v.

STATE OF NEW JERSEY, et al.,

Defendants.

Civil Action No. 16-2990 (MAS) (LHG)

**MEMORANDUM ORDER ON
APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES**

This matter comes before the Court of the applications of Plaintiffs Shawn Antonio Trapp and Kevin Ortega¹ to proceed without prepayment of fees under 28 U.S.C. §1915. (Applications, ECF Nos. 3, 3-1.) The Court will grant the applications on the strength of Plaintiffs' allegations of indigence but remand the case for lack of jurisdiction.

Plaintiffs Shawn Antonio Trapp, Kevin Ortega, Denard Charles Trapp, and Timothy Johnson ("Plaintiffs") filed a "Emergency Notice of Petition And Verified Petition For Warrant Of Removal and Retention" seeking to remove a criminal proceeding from the Municipal Court in the City of Elizabeth, Complaint no. W2015001209. (ECF No. 1.) Plaintiffs assert that this Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1333, 28 U.S.C. § 1367, 28 U.S.C. § 1441(b), (c), (e), 28 U.S.C. § 1446, and 28 U.S.C. § 1443(1) and (2). (Notice of Removal 1-2, ECF No. 1.) Additionally, Plaintiffs state that removal is made "solely on the basis of the violations of their constitutional, due process, and equal protection rights by the state court." (*Id.*) Sections 1331, 1333, 1367, 1441, and 1446 concern the removal of civil actions originally filed in state courts. As no civil actions have been filed in the state courts, those sections are irrelevant.

¹ Plaintiffs Denard Charles Trapp and Timothy Johnson have not submitted applications to proceed in forma pauperis.

Section 1443(1) “provides for the removal of a criminal prosecution commenced in a state court where the defendant ‘is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.’” *In re Ingris*, 601 F. App’x 71, 75 (3d Cir. 2015), *reh’g denied* (July 16, 2015) (quoting § 1443(1)). Here, Plaintiffs do not allege any deprivation of any “civil rights,” but instead assert that their rights under the United States Constitution and the New Jersey State Constitution have been violated. (*See generally* Notice of Removal.) Additionally, § 1443(2) “confers a privilege of removal only upon federal officers or agents and those authorized to act with or for them in affirmatively executing duties under any federal law providing for equal civil rights.” *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 824 (1966). As Plaintiffs do not assert that they are federal officers or agents, this section does not apply. Thus, removal of Plaintiffs’ criminal proceeding from state court is not permitted as Plaintiffs have failed to set forth valid grounds for removal. Accordingly,

IT IS, on this 5th day of July 2016, ORDERED that:

1. Plaintiffs’ application to proceed *in forma pauperis* is hereby granted pursuant to 28 U.S.C. § 1915;
2. The Clerk of the Court shall file the Notice of Removal without prepayment of fees or security; and
3. This action is remanded to the Municipal Court of the City of Elizabeth.


MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE